IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5558 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHIEF OFFICER - Petitioner(s)
Versus
CHAMPAKLAL LALLUBHAI KEWAT & 2 - Respondent(s)

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Appearance :
MR YV SHAH for Petitioner(s) : 1,
MR AK CLERK for Respondent(s) : 1,
MR LB DABHI ld. AGP for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 29/06/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.Y.V.Shah, appearing on behalf of petitioner and learned

Advocate Mr.Clerk, appearing on behalf of respondent No.1 – employee and learned AGP, Mr.Dabhi, appearing on behalf of respondent Nos.2 and 3.

2. In the present petition, the petitioner has challenged the order dated 8.8.1996 passed by Controlling Authority in Gratuity Application No.99 of 1995. The petitioner has also challenged the order dated 24.6.1997 passed by appellate authority in Gratuity Appeal No.1 of 1997.

3. The controlling authority, after considering the contentions raised by both the respective parties, come to conclusion that respondent – employee is entitled to the amount of gratuity of Rs.48,581/- along with 10% simple interest. The controlling authority has directed the petitioner to pay the said amount with interest to the respondent employee and the appellate authority has confirmed the said order passed by controlling authority. The contention raised by

petitioner has been rejected by the appellate authority.

4. Learned Advocate, Mr.Shah, submitted that respondent employee was working as Octroi Clerk w.e.f. 6.6.1961 and he tendered resignation on 29.5.1993 which was accepted by the petitioner on the same day. He also submitted that while working as Octroi Clerk, some irregularities were committed by the workman and, therefore, loss was caused to the petitioner to the tune Rs.13,403.90 paise and, therefore, the petitioner is entitled to recover the said loss from the amount of gratuity of respondent employee. This contention was also raised before the controlling authority by the petitioner, but the petitioner has not given any detail as to on what basis this amount has been determined by the petitioner. Therefore, the controlling authority has rejected the contention raised by petitioner while considering Section 13 of the Payment of Gratuity Act. Then, same contention was raised before the appellate

authority which was also rejected while considering the provisions of Section 13 of Payment of Gratuity Act,1972. Learned Advocate, Mr.Shah, submitted that at Page-31, copy of General Board Resolution No.104/93/94 dated 20.7.1993 was produced wherein it was mentioned that after holding the inquiry, report was submitted on 5.6.1993 and then, the respondent employee was held liable for the amount of Rs.13,403.90 paise towards the loss caused to the petitioner. Looking to this resolution, it appears that no departmental inquiry was initiated against the respondent employee before accepting the resignation of the employee by the petitioner. So under Section 4(6) of the Payment of Gratuity Act,1972 which empowers the employer that if service of an employee was terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of, property belonging to employer shall be forfeited to the extent of damage or loss. The Section 4 sub-section (6) is quoted as under :

> “Section 4(6)- Notwithstanding anything contained in sub-section (1)-
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> (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
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> (b) the gratuity payable to an employee {may be wholly or partially forfeited}-
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> (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
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> (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude , provided that such offence is committed by him in the course of his employment.”

5. Except this, there is no provision in Gratuity Act which empowers or authorizes the employer to forfeit the amount of gratuity which is found to be due in favour of concerned

employee. It is not the case of petitioner that service of the respondent employee was terminated by the petitioner. But it is an undisputed fact that respondent employee has tendered resignation on 29.5.1993 which was accepted by the President on the same day and subsequently, it was approved by General Board Resolution dated 10.6.1993. Therefore, it is not a case of termination which gives power or authorize the authority to forfeit the amount of gratuity.

6. This aspect has been examined by a Division Bench of this Court in case of GSRTC Vs. Devendrabhai Mulvantrai Vaidya reported in 2005 III CLR 513. Relevant Para.3 of the said decision is quoted as under :

> “Sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972 says that the gratuity of an employee shall be forfeited to the extent of damage or loss so caused if the services of such employee has been terminated for any act, wilful omission or negligence causing any damage or loss to or

destruction of, property belonging to the employer. For application of this clause, the first submission should be that the services of the employee has been terminated for any act, wilful omission or negligence causing any damage or loss to or destruction of, property belonging to the employer. In the present case, the appellant does not say that for any such misconduct as provided in clause (a) of sub-Section (6), the services have been terminated. So far as clause (b) of Sub-section (6) is concerned, it provides that the gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. It is not the case of the appellant that the employee has been terminated for his riotous or disorderly conduct or any other act of violence or he has been terminated for an act which constitutes an offence involving moral turpitude. If the

employee / workman was allowed to retire after completing about 38 years on reaching the age of superannuation, then the provisions contained in sub-section (6) of Section 4 would not apply. Before the learned Single Judge, the fact was not disputed that the respondent workman was allowed to retire. Pendency of the criminal case or the departmental enquiry would not entitle the appellant Establishment to forfeit the gratuity either wholly or in part if the employee has not been terminated under the provisions of sub-section (6) of Section 4 of the Act. So far as the judgment of the Supreme Court in the matter of Calcutta Insurance Ltd. (supra) is concerned, we must immediately observe that the reliance placed on the judgment is misconceived. In the said matter, considering the case where an employee voluntarily resigned and brought about termination of his service the Apex Court made such observations. Present is not a case of that nature. In the present matter, the employee was allowed to retire on completion of 38 years on attaining superannuation. The submissions made by the appellant are misconceived. They

deserve to and are accordingly rejected. The appeal is dismissed.Consequently, Civil Application for stay is also dismissed.”

7. Therefore, in light of the aforesaid observations of the Division Bench of this Court as well as considering the fact that it is not the case of termination of service of an employee by the employer and it does not fall within the purview of Section 4(6) of the Payment of Gratuity Act,1972, therefore, the controlling authority has rightly rejected the contention raised by petitioner and same has been rightly dealt with by the appellate authority while rejecting the same contention raised by petitioner. Therefore, according to my opinion, both the authorities below have rightly decided the matter and no error has been committed by either of the authorities while deciding the matter under the provisions of Payment of Gratuity Act,1972. Therefore, there is no infirmity in the order which requires any

interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Present petition is dismissed. Rule is discharged. Interim relief, if any, stands vacated.

8. Learned Advocate, Mr.Clerk, submitted that the petitioner has paid Rs.35,177.10 paise to the respondent employee on 27.10.1997. Therefore, his submission is that the respondent employee is entitled to the amount of interest on delayed payment of gratuity within a period of 30 days from the date on which it fell due and payable in favour of respondent employee. Therefore, the petitioner employer is directed to pay the remaining amount to the respondent employee as per the order passed by controlling authority with interest, as specified by controlling authority, as per provisions of Section 7(3)(A) of the Payment of Gratuity Act,1972. Meaning thereby, the respondent employee is entitled to

the interest on the due amount of gratuity under the Payment of Gratuity Act,1972 after completion of 30 days from the date on which the resignation was accepted by the petitioner. The petitioner is directed to pay this amount to the respondent employee within a period of one month from the date of receiving a copy of this order.

(H.K.RATHOD,J.)

(vipul)